Award No. 619

Docket No. 579

2-Va-SM-'41

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee John P. Devaney when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 40, RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L. (SHEET METAL WORKERS)

THE VIRGINIAN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: That C. H. Byrd, a pipe and tin shop helper, should be paid the difference between the differential rate and that of a mechanic for all time worked between March 1, 1924, and June 10, 1938, during which time he was assigned to operate the pipe cutting and threading machine in the pipe and tin shop at Princeton, W. Va.; the difference between the differential rate and that of a mechanic is ten (10) cents per hour.

EMPLOYES' STATEMENT OF FACTS: C. H. Byrd was employed by the Virginian Railway Company on May 1, 1923, as a pipe and tin shop helper, and was assigned as such until on or about March 1, 1924, at which time he was assigned by management to operate the pipe cutting and threading machine in the pipe and tin shop at Princeton, W. Va., and was paid a differential rate of ten cents (10¢) per hour less than the mechanic's rate for all time worked by him (Byrd) from March 1, 1924, until June 10, 1938, while operating said machine.

POSITION OF EMPLOYES: We claim that Rule 14 of the then and now existing agreement provides that "when an employe is required to fill the place of another employe receiving a higher rate of pay, he shall receive the higher rate," and we claim that the operating of the pipe cutting and threading machine is mechanic's work, classified as such by the language of Sheet Metal Workers Classification of Work Rule 86 of the then and now existing agreement quoted in part, "fitting, cutting, threading, brazing, connecting and disconnecting of air, water, gas, oil and steam pipes;" this language above quoted identifies the cutting and threading of pipe as that work which belongs to a mechanic, and we further claim that there is no other rule in the then and now existing agreement that gives management the right to assign a helper to mechanic's work and pay him less than the mechanic's rate of pay, and we so hope that your Honorable Board will rule in this case, and order that Mr. C. H. Byrd be compensated in accordance with our claim as herein presented.

The question of Mr. Byrd's seniority and classification is not involved in this case as that question was decided by the National Railroad Adjustment Board, Second Division, in an award rendered by that Board dated at Chicago, Ill., June 7, 1939, Award No. 342, Docket No. 354.

made by either Mr. Byrd, the individual employes or by their authorized committee of representation and the first exception to be made was contained in Mr. Byrd's letter of October 12, 1939, addressed to Mr. M. C. Thomason, pipe and tin shop foreman and his authorized committee's letter of October 23, 1939, addressed to Mr. F. S. Tinder, shop superintendent, this being some fifteen (15) years two (2) months later. Copy of said letter marked Exhibit A, also submitted is copy of investigation in connection with committee's letter marked Exhibit B.

Of course, the actual obvious fact is, that for fifteen (15) years and some months, the claimant and his representative never dreamed they had the slightest case against the carrier. Something happened or came to the attention of the claimant or his representative towards the end of those fifteen (15) years and some months to cause him to think he now has a claim of some kind against the carrier, and that something was the Board's Award No. 342, Docket No. 354 referred to in the employes' submission, in which the Board states the work to which Mr. Byrd was assigned is sheet metal worker's work as prescribed in Rule 86.

THE CARRIER SUBMITS: 1—That even if it did violate the agreement provisions which the carrier denies, the fifteen (15) years and some months is entirely too long a period for the claimant and his representative to leave such violation dormant and unasserted. Such a long dormancy should certainly be held to have caused the legal death of any claim in connection with any alleged violation.

2—That this Division of the Adjustment Board has no jurisdiction to hear and decide this case as there was no dispute growing out of any grievance or case pending and unadjusted within the meaning of Section 3—First (i) of the amended Railway Labor Act as approved June 21, 1934, against the carrier.

3—That the Board has no jurisdiction to hear the claim or make an award, that no claim or complaint was made until October, 1939; that a claim which was first presented over five (5) years after the amended law became effective cannot be said to have been pending and unadjusted when the law took effect on June 21, 1934, and on that one fact and that one fact alone, the claim should be dismissed.

4—That Mr. Byrd having accepted the differential rate of pay and worked at that rate for fourteen (14) years without protest, also without protest on the part of the committee representing him until October, 1939, following the Second Division's Award that it was sheet metal worker's work; that the manner in which it was established constituted an agreement between the railway company and Mr. Byrd and may not be disputed at this late date.

5—That when Byrd filed his claim which was heard and decided by this Board in said Award No. 342, Docket No. 354, he elected to base his claim on the status of a differential pipe fitter helper, and having made his election, he should not now be permitted to claim a different and inconsistent status during the same period.

6—That all claims in regard to the work performed by Byrd prior to the submission of his case to the Adjustment Board on March 9, 1939, have been adjudicated by the Board in its decision rendered in Award No. 342, Docket No. 354, under date of June 7, 1939.

7—That the claim here presented is barred by the statute of limitations for the reason that the cause of action accrued more than five (5) years prior to the passage of the Railway Labor Act, and more than five (5) years prior to the institution of this proceeding.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

On the entire record, it would be unjust to compel payment as demanded by the employes. Fairness and good faith do not support the employes' position in view of the facts here present.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 11th day of June, 1941.